



2013 Legislative Session  
House State Administration  
Melanie Symons - Chief Legal Counsel  
Montana Public Employees' Retirement Board

## House Bill 122

### *An Act Generally Revising Provisions Related to Federal Tax Qualification of the Retirement Systems Administered by the Public Employees' Retirement Board*

The retirement systems administered by the Board are tax-qualified retirement systems under 401(a) of the federal Internal Revenue Code. Contributions into tax-qualified retirement systems, and the earnings associated with those contributions, are tax-deferred. If a system is determined by the IRS to not be qualified, the contributions and earnings for that system will be immediately subject to taxation.

House Bill 122 addresses statutory amendments required to ensure the retirement systems administered by the Public Employees' Retirement Board remain tax qualified plans. The proposed legislation was reviewed by the State Administration and Veterans' Affairs Interim Committee.

The federal government reviews governmental plans for qualification through a process called Cycle C filing. The Board submitted its Cycle C filings in October 2008. In May 2012 we were notified that the IRS would only approve our plans as qualified if we (1) amend the definition of normal retirement age to be based on either age or a combination of age and service, but not membership service alone; and (2) specifically state in law that retirement benefits are non-forfeitable at normal retirement age.

Section 1 of the bill addresses the 1<sup>st</sup> requirement by amending the definition of "normal retirement age" for all systems administered by the Board. Sections 6 through 12 (pp. 16 – 19) address both requirements for each system administered by the Board. With these amendments, "normal retirement age" will contain an age component and our law will clearly state that members are eligible to receive their retirement benefit upon normal retirement age – the benefit is non-forfeitable at normal retirement age. Members have always been eligible for retirement benefits at normal retirement age. So, this is not a change to the law – only a clear statement of existing law as required by the IRS.

There are a few other amendments in this Bill that have been recommended by independent tax counsel to ensure our plans remain qualified. For instance, section 3, pp. 12 and 13 applies to a Public Employee Retirement System Defined Contribution (DC) member who is on USERRA leave and receiving differential pay from the member's employer. The amendment clarifies that the differential pay received is added to the member's compensation for purposes of determining the cap on contributions that can be paid into the member's DC account.

The amendment to Section 4 on p. 15 clarifies that after tax-contributions in a member's retirement account can be rolled to a defined contribution plan, a qualified defined benefit plan or an annuity contract under section 403(b), but only if the receiving account separately accounts for the after-tax contributions and earnings on those amounts for tax purposes.

Finally, section 2 of the bill on pp. 8-9 is the only section with fiscal impact. As the fiscal note indicates, starting FY2015 Governmental Accounting Standards Board (GASB) Statement 68 will require employers to report their net pension liability on their financial statements and provide additional retirement-related disclosures in their financial reports. This will require information and reports from the Board's actuary, and will come at a cost. Since, subject to limited administrative costs, our retirement trust funds can be used only for the benefit of our members and their beneficiaries, the Board must pass the cost of these reports on to the employers who require the information. The estimated costs are approximately \$40,000 the first year and \$20,000 a year thereafter. The fiscal note breaks the cost out by employer type, as well as fund type.

The table distributed to the Committee at the start of the hearing provides a section-by-section summary of Board's proposed changes. I'd be happy to address any questions regarding the table or my testimony today.

On behalf of the Public Employees' Retirement Board, I encourage a "do pass" on HB 122